

**§ 102.3 Collection by administrative offset.**

(a) Collection by administrative offset will be undertaken in accordance with these standards and implementing regulations established by each agency on all claims which are liquidated or certain in amount in every instance in which such collection is determined to be feasible and not otherwise prohibited.

(1) For purposes of this section, the term “administrative offset” has the meaning provided in 31 U.S.C. 3716(a)(1).

(2) Whether collection by administrative offset is feasible is a determination to be made by the creditor agency on a case-by-case basis, in the exercise of sound discretion. Agencies should consider not only whether administrative offset can be accomplished, both practically and legally, but also whether offset is best suited to further and protect all of the Government’s interests. In appropriate circumstances, agencies may give due consideration to the debtor’s financial condition, and are not required to use offset in every instance in which there is an available source of funds. Agencies may also consider whether offset would tend to substantially interfere with or defeat the purposes of the program authorizing the payments against which offset is contemplated. For example, under a grant program in which payments are made in advance of the grantee’s performance, offset will normally be inappropriate. This concept generally does not apply, however, where payment is in the form of reimbursement.

(b) Except as provided in § 101.4, this paragraph or § 102.4, the standards in this paragraph shall apply to the collection of debts by administrative offset under 31 U.S.C. 3716, some other statutory authority, or the common law.

(1) Agencies shall prescribe regulations for the exercise of administrative offset.

(2) Agency regulations required by paragraph (b)(1) of this section shall establish procedures for providing a debtor, before the offset is made, with appropriate procedural rights. Except as otherwise required by law, those regulations shall provide for: Written no-

tice of the nature and amount of the debt, and the agency’s intention to collect by offset; opportunity to inspect and copy agency records pertaining to the debt; opportunity to obtain review within the agency of the determination of indebtedness; and opportunity to enter into a written agreement with the agency to repay the debt. Agency regulations shall also establish procedures for making requests for offset to other agencies holding funds payable to the debtor, and for processing requests for offset that are received from other agencies.

(i) Agencies have discretion and should exercise sound judgment in determining whether to accept a repayment agreement in lieu of offset. The determination should balance the Government’s interest in collecting the debt against fairness to the debtor. If the debt is delinquent and the debtor has not disputed its existence or amount, an agency should accept a repayment agreement in lieu of offset only if the debtor is able to establish that offset would result in undue financial hardship or would be against equity and good conscience.

(ii) In cases where the procedural requirements specified in paragraph (b)(2) of this section have previously been provided to the debtor in connection with the same debt under some other statutory or regulatory authority, such as pursuant to a notice of audit disallowance, the agency is not required to duplicate those requirements before taking administrative offset.

(3) Agencies may not initiate administrative offset to collect a debt under 31 U.S.C. 3716 more than 10 years after the Government’s right to collect the debt first accrued, unless facts material to the Government’s right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who were charged with the responsibility to discover and collect such debts. When the debt first accrued is to be determined according to existing law regarding the accrual of debts, such as under 28 U.S.C. 2415.

(4) Agencies are not authorized by 31 U.S.C. 3716 to use administrative offset with respect to: (i) Debts owed by any

State or local Government; (ii) debts arising under or payments made under the Social Security Act, the Internal Revenue Code of 1954, or the tariff laws of the United States; or (iii) any case in which collection of the type of debt involved by administrative offset is explicitly provided for or prohibited by another statute. However, unless otherwise provided by contract or law, debts or payments which are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the common law or other applicable statutory authority.

(5) Agencies may effect administrative offset against a payment to be made to a debtor prior to the completion of the procedures required by paragraph (b)(2) of this section if: (i) Failure to take the offset would substantially prejudice the Government's ability to collect the debt, and (ii) the time before the payment is to be made does not reasonably permit the completion of those procedures. Such prior offset must be promptly followed by the completion of those procedures. Amounts recovered by offset but later found not to be owed to the Government shall be promptly refunded.

(c) Type of hearing or review: (1) For purposes of this section, whenever an agency is required to afford a debtor with a hearing or review within the agency, the agency shall provide the debtor with a reasonable opportunity for an oral hearing when: (i) An applicable statute authorizes or requires the agency to consider waiver of the indebtedness involved, the debtor requests waiver of the indebtedness, and the waiver determination turns on an issue of credibility or veracity; or (ii) the debtor requests reconsideration of the debt and the agency determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity. Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary-type hearing, although the agency should always carefully document all significant matters discussed at the hearing.

(2) This section does not require an oral hearing with respect to debt collection systems in which determinations of indebtedness or waiver rarely involve issues of credibility or veracity and the agency has determined that review of the written record is ordinarily an adequate means to correct prior mistakes. In administering such a system, the agency is not required to sift through all of the requests received in order to accord oral hearings in those few cases which may involve issues of credibility or veracity.

(3) In those cases where an oral hearing is not required by this section, the agency shall nevertheless accord the debtor a "paper hearing," that is, the agency will make its determination on the request for waiver or reconsideration based upon a review of the written record.

(d) Appropriate use should be made of the cooperative efforts of other agencies in effecting collection by administrative offset, including use of the Army Holdup List. Generally, agencies should not refuse to comply with requests from other agencies to initiate administrative offset to collect debts owed to the United States, unless the requesting agency has not complied with the applicable provisions of these standards or the offset would be otherwise contrary to law.

(e) Collection by offset against a judgment obtained by a debtor against the United States shall be accomplished in accordance with 31 U.S.C. 3728.

(f) Whenever the creditor agency is not the agency which is responsible for making the payment against which administrative offset is sought, the latter agency shall not initiate the requested offset until it has been provided by the creditor agency with an appropriate written certification that the debtor owes a debt (including the amount) and that the provisions of this section have been fully complied with.

(g) When collecting multiple debts by administrative offset, agencies should apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, paying special

## Federal Claims Collection Standards

## § 102.6

attention to applicable statutes of limitations.

### **§ 102.4 Administrative offset against amounts payable from Civil Service Retirement and Disability Fund.**

(a) Unless otherwise prohibited by law, agencies may request that moneys which are due and payable to a debtor from the Civil Service Retirement and Disability Fund be administratively offset in reasonable amounts in order to collect in one full payment or a minimal number of payments debts owed to the United States by the debtor. Such requests shall be made to the appropriate officials of the Office of Personnel Management in accordance with such regulations as may be prescribed by the Director of that Office.

(b) When making a request for administrative offset under paragraph (a) of this section, an agency shall include a written certification that:

(1) The debtor owes the United States a debt, including the amount of the debt;

(2) The requesting agency has complied with the applicable statutes, regulations, and procedures of the Office of Personnel Management; and

(3) The requesting agency has complied with the requirements of § 102.3 of this part, including any required hearing or review.

(c) Once an agency decides to request administrative offset under paragraph (a) of this section, it should make the request as soon as practical after completion of the applicable procedures in order that the Office of Personnel Management may identify and “flag” the debtor’s account in anticipation of the time when the debtor requests or becomes eligible to receive payments from the Fund. This will satisfy any requirement that offset be initiated prior to expiration of the applicable statute of limitations. At such time as the debtor makes a claim for payments from the Fund, if at least a year has elapsed since the offset request was originally made, the debtor should be permitted to offer a satisfactory repayment plan in lieu of offset upon establishing that changed financial circumstances would render the offset unjust.

(d) If the requesting agency collects part or all of the debt by other means before deductions are made or completed pursuant to paragraph (a) of this section, the agency shall act promptly to modify or terminate its request for offset under paragraph (a) of this section.

(e) This section does not require or authorize the Office of Personnel Management to review the merits of the requesting agency’s determination with respect to the amount and validity of the debt, its determination as to waiver under an applicable statute, or its determination to provide or not provide an oral hearing.

### **§ 102.5 Use of consumer reporting agencies.**

(a) Agencies shall develop and implement procedures for reporting delinquent debts to consumer reporting agencies. For purposes of this section, the term “consumer reporting agency” has the meaning provided in 31 U.S.C. 3701(a)(3).

(b) In developing procedures under paragraph (a) of this section, agencies must have due regard for compliance with the Privacy Act of 1974, as amended, 5 U.S.C. 552a. However, consumer reporting agencies themselves are not subject to the Privacy Act.

(c) Agency procedures developed under paragraph (a) of this section shall be consistent with the requirements of 31 U.S.C. 3711(f) and § 102.3(c) of this part.

### **§ 102.6 Contracting for collection services.**

(a) All agencies have authority to contract for collection services to recover delinquent debts, provided that the following conditions are satisfied:

(1) The authority to resolve disputes, compromise claims, suspend or terminate collection action, and refer the matter for litigation (§ 105.1) must be retained by the agency;

(2) The contractor shall be subject to the Privacy Act of 1974, as amended, to the extent specified in 5 U.S.C. 552a(m), and to applicable Federal and State laws and regulations pertaining to debt collection practices, such as the Fair Debt Collection Practices Act, 15 U.S.C. 1692;